Appendix A

In the Superior Court of the State of California, in and for the City and County of San Francisco Appellate Department

Appeal No. 1040

The People of the State of California,
Plaintiff and Respondent,
vs.
Thomas N. Burbridge, et al.,
Defendants and Appellants.

MEMORANDUM OPINION BY THE COURT

A review of the evidence and the law discloses no error in the conviction of the defendants.

Defendants-appellants were convicted of the following:

1. Violation of Section 407, Penal Code (assembly in a violent, boisterous and tumultuous manner).

2. Violation of Section 409, Penal Code (remaining present at a place of an unlawful assembly after they had been lawfully warned to disperse).

3. Violation of Section 602j, Penal Code (trespass).

The court sentenced one defendant, Burbridge, to three months on each charge, to be served consecu-

tively, and the remaining defendants to fifteen days on each charge, to be served consecutively.

Appellants contend that the consecutive sentences are in violation of Section 654, Penal Code, which provides, in its pertinent provisions, as follows:

> "Acts Made Punishable by Different Provisions of this Code. An act or omission which is made punishable in different ways by different provisions of this Code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. . . ."

This contention is partially correct. Since the act of entering the premises was charged as "lawful" (Section 407 Penal Code), the trespass charged under Section 602j, Penal Code could not have occurred with the entry, but must have occurred subsequently. The record clearly established the time of the violation, i.e., the warning of management and the police, followed by unlawful conduct and defiance of lawful directives. The clearly expressed intent of defendants was to remain in and about the premises in contravention of law. This intent, so forcibly expressed, was a violation of Sections 409 and 602j, Penal Code.

The law is clearly established:

> "The divisability of a course of conduct depends upon the intent and objective of the defendant, and if all of the offenses are incident to one objective, the defendant may be punished for any

one of them but not for more than one." (*People v. Failla* (May 16, 1966) 64 A.C.A. 613, 624.)

We hold, therefore, that there can be only one sentence for violation of Sections 409 and 602j, the sentence for violation of Section 407 (three months—fifteen days) to run consecutive to the sentence of three months—fifteen days for the combined violation of Sections 409 and 602j.

The judgments are modified to provide sanctions as indicated. In other respects the judgments are affirmed.

Dated Sept. 7, 1966.

C. Harold Caulfield
Presiding Judge, Appellate Dept.
Alvin E. Weinberger
Judge, Appellate Department
Walter Carpeneti
Judge, Appellate Department

Filed September 7, 1966,
Martin Mongan, Clerk
By Harry L. Downie,
Deputy Clerk